

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

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JOSEPH DIMARCO,	)	
	)	
Plaintiff,	)	
	)	
VS.	)	No. 07-2561 JPM-sta
	)	
MICHAEL J. ASTRUE,	)	
COMMISSIONER OF	)	
SOCIAL SECURITY,	)	
	)	
Defendant.	)	
	)	

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ORDER ADOPTING REPORT AND RECOMMENDATION;  
ORDER REVERSING THE COMMISSIONER'S DENIAL OF  
PLAINTIFF'S CLAIMS;  
ORDER REMANDING CASE; and  
ORDER DENYING AS MOOT MOTION TO RESCIND ORDER

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Before the Court is the Report and Recommendation (DE # 24) of Magistrate Judge S. Thomas Anderson, submitted on January 30, 2008, recommending that the decision of the Commissioner be reversed. Upon de novo review, the Court ADOPTS the Magistrate Judge's Report and Recommendation in its entirety, REVERSES the Commissioner's denial of Plaintiff's claims, and REMANDS the case for a hearing consistent with this Order and the Report and Recommendation of the Magistrate Judge.

The Magistrate Judge found that substantial evidence does not exist to support the Administrative Law Judge's ("ALJ")

determination that Plaintiff is not disabled. More specifically, the Magistrate Judge found that (1) the ALJ incorrectly relied on vocational expert testimony that was not in the record before him, (2) the ALJ did not profer a hypothetical question to the vocational expert that contained all of Plaintiff's limitations, and (3) the ALJ failed to perform the six-factor analysis for the opinions of Plaintiff's treating sources as prescribed by 20 C.F.R. § 404.1527.

No objections to the Report and Recommendation have been filed, and the time for filing objections has expired. See 28 U.S.C. § 636(b)(1)(C); see also Harris v. City of Akron, 20 F.3d 1396, 1402-03 (6th Cir. 1994) ("Failure to file an objection to a magistrate judge's recommendation constitutes a waiver of the right to appeal on the basis of that recommendation.") (citing Thomas v. Arn, 474 U.S. 140, 153-54 (1985)); Frontier Ins. Co. v. Blaty, 454 F.3d 590, 596-97 (6th Cir. 2006).

Upon de novo review, the Court ADOPTS the Magistrate Judge's Report and Recommendation in its entirety, REVERSES the Commissioner's denial of Plaintiff's claims, and REMANDS the case for a hearing consistent with this Order and the Report and Recommendation (DE # 24) of the Magistrate Judge.

Additionally pending before the Court is the Motion to Rescind August 29, 2007 Order (DE # 26), filed September 13,

2007. Because the Court remands this case in the instant Order,  
the Motion to Rescind is DENIED AS MOOT.

So ORDERED this 19<sup>th</sup> day of February, 2008.

/s/ JON P. McCALLA  
UNITED STATES DISTRICT JUDGE